

ROOF INSTALLATION, EASEMENT, RESTRICTIVE  
COVENANT AND CONTINGENT REPAYMENT AGREEMENT

THIS AGREEMENT is made as of \_\_\_\_\_,  
1978, by and among the UNITED STATES OF AMERICA, represented  
by the SECRETARY OF TRANSPORTATION (hereinafter the "Secretary"),  
acting through the FEDERAL RAILROAD ADMINISTRATOR and the  
FEDERAL RAILROAD ADMINISTRATION (hereinafter "FRA"); the  
BOSTON REDEVELOPMENT AUTHORITY (hereinafter "BRA"); and the  
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY (hereinafter  
"MBTA").

WITNESSETH:

WHEREAS, Congress has authorized the Secretary,  
pursuant to the Railroad Revitalization and Regulatory  
Reform Act of 1976, P.L. 94-210, 45 U.S.C. §§ 801 et seq.  
(hereinafter the "4R Act"), to improve the Northeast Corridor  
to facilitate high speed intercity rail passenger service  
between Boston, Massachusetts, and Washington, D.C.; and

WHEREAS, rehabilitation of Boston South Station, a  
railroad passenger station located at the southeast corner  
of Atlantic Avenue and Summer Street, Boston, Massachusetts  
(hereinafter the "Station"), would promote the goals specified  
by Congress in §703(1)(A) and (B) of the 4R Act; and

WHEREAS, the Boston South Station Building (hereinafter the "Station Building") is a significant part of Boston South Station, and in order to retain its availability for use in connection with intercity rail passenger service, certain repairs must be made to the Station Building; and

WHEREAS, it is in the interest of all parties to prevent further deterioration of the Station Building by rehabilitating the roof and performing associated repair work (hereinafter the "Work"); and

WHEREAS, FRA desires to perform the Work so that, should FRA decide at a future date to improve the Station, including but not limited to the Station Building, under the auspices of the Northeast Corridor Improvement Project (hereinafter the "NECIP"), FRA will not have to expend even larger sums of money to rehabilitate the roof of, and to perform associated work on, the Station Building, which would be necessary if deterioration is allowed to continue; and

WHEREAS, BRA, as the fee owner of the Station, and MBTA, as the tentatively designated developer of the Station, hereinafter agree, inter alia, to certain covenants and conditions as an inducement to FRA to perform the Work on the Station Building.

NOW, THEREFORE, the parties hereto, in consideration of the mutual agreements contained herein, hereby agree as follows:



## ARTICLE I

### Scope of the Work

In accordance with the provisions of §205 hereof, FRA shall arrange to design and to perform the Work, solely at its cost and expense, substantially in conformance with the preliminary scope of work document attached hereto as Exhibit A, as reflected in final design plans and specifications (hereinafter collectively referred to as the "final design documents") prepared pursuant to the provisions of Article II. FRA shall not be obligated by this Agreement to make any repairs or improvements to the Station Building or the Station other than the Work. FRA reserves the right to reduce the scope of Work in the event that the final cost estimate for the Work, as determined by FRA, exceeds \$250,000; provided, however, that in any event, the contemplated permanent improvement of the headhouse roof will be performed.

## ARTICLE II

### Design and Repair

§201 FRA shall prepare the final design documents for the Work, including but not limited to a revised cost estimate and installation schedule, based on the preliminary scope of work document attached hereto as Exhibit A.

§202 FRA shall deliver the final design documents to all other parties for review and comment. The final design documents shall be reviewed for adherence to sound engineering practices, compliance with NECIP standard specifications and federal, state and local code requirements and conformity with the scope of work document attached hereto as Exhibit A.

§203 Design review comments shall be forwarded to FRA within twenty (20) days of receipt of such final design documents. Failure by any party to submit comments within twenty (20) days of receipt shall be deemed a waiver by that party of its right to have its comments considered. Design review comments which are timely transmitted shall be given reasonable consideration by FRA. FRA shall incorporate part or all of the substance of such design review comments into the final design documents prior to awarding a construction contract for the Work or, through detailed discussion with the commenting parties, advise such parties of its election not to incorporate part or all of such comments and the reasons therefor.



§204 If any party finds the final design documents unacceptable after FRA modification or advice pursuant to §203, then within fifteen (15) days of receipt of such modification or within fifteen (15) days of the completion of such discussions, such party may request the Project Director of the Northeast Corridor Project within FPA (hereinafter "Project Director") to reevaluate the modification or decision, in which event the Project Director shall render a final decision in writing within fifteen (15) days of receiving such request.

§205 In full conformity with all applicable Federal Procurement Regulations (Title 41 of the Code of Federal Regulations), FRA shall arrange for the Work to be performed in accordance with the final design documents.

§206 BRA and MBTA shall each have the right to visit the construction site from time to time to inspect the prosecution of the Work, provided that FRA's contracting officer or his designated representative is given reasonable prior notice in each instance.

207 FPA shall notify all other parties at least ten (10) days prior to its final inspection and acceptance of the Work and shall afford such parties the opportunity to have their representatives accompany FRA representatives on such final inspection. The scope of such inspection shall be limited to a determination of whether the Work was performed in accordance with the final design documents. Each of the other parties electing to participate in such

final inspection shall have the right to submit to FRA a written listing of alleged defects within five (5) days following such inspection. Failure by any party to submit comments within five (5) days following such inspection, or failure by any party to participate in such inspection, shall be deemed a waiver by such party of its right to have its comments considered by FRA. FRA shall include the alleged defects listed by such other parties in FRA's listing of defects transmitted to or discussed with its contractor or, after prompt discussion of the alleged defects in detail with the parties submitting same, FRA shall advise such parties of its election not to include any one or more of such alleged defects in FRA's listing or discussion.



ARTICLE III

Easement, Covenant, Default  
and Contingent Repayment

§301 BRA and MBTA (to the extent of its interest, if any, in such property) each hereby grant a construction easement to FRA, its employees, agents, servants, contractors, and assigns, over, under and to the real property described in Exhibit B attached hereto (hereinafter the "Station Property") in order to enter with workmen, equipment, machinery and other persons and things, and to do anything on or to the Station Property reasonably necessary to perform the Work or to facilitate the performance of such Work or associated maintenance, including but not limited to surveying, preconstruction preparation, construction or installation, and inspection of the Station, the Station Building or any of the Station Property from time to time prior to, during and following the performance of the Work.

§302 BRA and MBTA (to the extent of its interest, if any, in the Station Property) covenant that the Station, the Station Building and the Station Property shall, until January 1, 1984, remain available at all times for intercity rail passenger service. The covenant set forth in this §302 shall bind and run with the title to the Station Property, and shall be binding on all parties having or acquiring any right, title, or interest in the Station, the

Station Building or the Station Property under or through BRA or MBTA. The provisions of this §302 shall not be construed to obligate BRA and MBTA to commit any additional portion of the Station Property to intercity rail passenger service, or to increase the present level of utilization of any portion of the Station Property for intercity rail passenger service.

§303 Any material breach of the terms and conditions of this Agreement by BRA or MBTA shall constitute an event of default entitling FRA to exercise the remedies set forth in §304. For purposes of this §303, events which shall be deemed material breaches shall include, but not be limited to, (a) any breach of the intercity rail passenger service covenant set forth in §302, (b) any breach of the purchase price credit provisions set forth in Article IV, and (c) any breach of the maintenance provisions set forth in Article V.

§304 Upon the occurrence of any default referred to in §303, FRA shall have the right, at its option: (a) to cease, or continue until completion, all Work being performed under this Agreement; (b) to receive as monetary damages from the owner of the Station Property, whether it is BRA or MBTA, reimbursement for all amounts expended by FRA in connection with the performance of the



Work (less depreciation); (c) to avail itself of both of the remedies set forth in clauses (a) and (b) of this section; (d) to receive specific performance; or (e) to exercise any other right or remedy available to FRA at law or in equity.

§305 For purposes of this Agreement, whenever depreciation of the Work is deductible from an amount to be paid or credited to FRA or any other entity, such depreciation shall commence on the date (certified by FRA) next following FRA's final acceptance of the Work from its contractor and shall accrue at the rate of one-sixtieth ( $1/60$ th) per month until the earlier to occur of (a) the operative event (i.e., the date of purchase or default), or (b) the fifth (5th) annual anniversary of such depreciation commencement date.

ARTICLE IV

Purchase Price Credit

In the event the FRA or the National Railroad Passenger Corporation (hereinafter "Amtrak") purchases or otherwise acquires the fee interest, a perpetual easement interest or any other equivalent interest in the Station, the Station Building, or any part of the Station Property from BRA or MBTA, the owner of the acquired interest shall credit the actual cost of the Work (less depreciation) against the amount FRA or Amtrak shall be obligated to pay to acquire such interest.

ARTICLE V

Maintenance Obligations

The owner of the Station Property, whether it is BRA or MBTA, shall be obligated to FRA to maintain until January 1, 1984, the components of the Work, solely at its expense, at the level of utility existing at the time the Work is completed. In the event such owner breaches this covenant, then in addition to the right described in §304, FRA or its designated agent shall have the right, at its option, to enter upon the Station Property and perform the



maintenance and/or repairs necessary to restore the level of utility existing at the time of completion of the Work, in which event such owner shall be liable to FRA for the reimbursement of all costs incurred by FRA, for maintenance and repair under this Article V, upon demand. Nothing in this Agreement shall be construed to alter existing rights or obligations of any tenant or user of the Station.

#### ARTICLE VI

##### Conditions to Agreement

This Agreement shall not become binding on the parties unless, upon execution hereof, BRA and MBTA supply an opinion of legal counsel acceptable to FRA stating that such counsel is familiar with the corporate or other organizational powers of such entity and that such entity is authorized to enter into this Agreement; that it has the requisite authority to carry out actions proposed in the Agreement and to assume the responsibilities and obligations created thereby; that the provisions hereof intended to secure FRA are enforceable in accordance with their terms; and that the individual signing this Agreement on behalf of such entity has the requisite authority to legally bind and obligate such entity.

ARTICLE VII

Recording

FRA, BRA and MBTA agree to execute any further documents which are necessary to record this Agreement among the land records of Boston, Massachusetts, or which are necessary to further secure and perfect FRA's rights under this Agreement. FRA shall have the right to record this Agreement among such land records at FRA's sole cost and expense.

ARTICLE VIII

Liability; Warranty

§801 FRA, BRA and MBTA shall each be liable for and bear all costs and expenses attributable to its negligence or malfeasance.

§802 FRA shall cause all warranties and rights of recourse in respect of the Work to be delivered to or assigned to the owner of the Station Property, and such owner shall have the right and the obligation to enforce such warranties and rights of recourse for the benefit of FRA.



ARTICLE IX

Miscellaneous

§901           It is agreed and acknowledged that this Agreement is a matter related to an undertaking of the United States of America and is incident to the implementation of a Federal program. Accordingly, as it may affect the rights, remedies, duties and obligations of the United States of America, this Agreement shall be governed and construed in accordance with Federal law.

§902           Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by each of the parties hereto, unless a provision hereof expressly permits fewer than all the parties to effect termination, amendment, supplementation, waiver or modification hereunder.

§903           All appendices and exhibits attached hereto are integral parts of this Agreement, and the provisions set forth in the appendices and exhibits shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement.

§904           All the covenants and obligations of the parties hereunder shall bind their successors and assigns whether or not expressly assumed by such successors and assigns.

§905           The provisions hereof are not intended to create any partnership or joint venture among the parties, and the rights and obligations with respect to third parties and inter se shall be as specifically set forth herein.

§906           All prior discussions, agreements and understandings of the parties are hereby integrated into this Agreement, and neither party shall be bound by any such prior discussions, agreements and understandings unless they are specifically included into the written language of this Agreement.

§907           Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with any party by another party or parties shall be in writing and shall be delivered by hand or by deposit in the registered mails of the United States Postal Service, postage prepaid, in an envelope addressed as follows:

    If to FRA:

        Project Director, Northeast Corridor Project  
        Federal Railroad Administration  
        2100 2nd Street, S. W.  
        Washington, D. C.     20590

    If to BRA:

        Director,  
        Boston Redevelopment Authority  
        City Hall  
        Boston Mass.     02201

    If to MBTA:

        Chairman,  
        Massachusetts Bay Transportation  
        Authority  
        50 High Street  
        Boston, Mass.     02110



§908           The captions used herein are for convenience only and shall not affect the construction hereof.

§909           The parties agree that in the performance of this Agreement, they will not discriminate or permit discrimination against any person on the grounds of race, color, religious creed, age, marital status, sex, national origin or physical or mental disability in any manner prohibited by the laws of the United States.

§910           The parties hereto acknowledge and agree that the provisions hereof shall in no way limit, restrict or otherwise prejudice the ability of such parties to reach different agreements in the future, and this Agreement shall be of no precedential force or effect whatsoever.

IN WITNESS WHEREOF, each of the parties hereto, intending to be legally bound, has caused the execution of this Agreement, under seal, on the date set forth below its signature, all as of the date first above written.



EXHIBIT A

SCOPE OF WORK

SOUTH STATION, BOSTON, MASS.

Work as described in MBTA request consists of the permanent improvement of headhouse roof; interim repair of passenger concourse roof; repair of windows on Summer Street and Atlantic Ave. sides; repair of front windows in keeping with style and historic nature of the building; repair of rear windows for weather resistance and pointing; basement cleanup; removal of abandoned mechanical equipment, and an interim drainage solution to the water leakage and flood problem.

Estimate of Construction Costs

\$250,000

EXHIBIT B

PROPERTY DESCRIPTION

BOSTON SOUTH STATION

The land, with the buildings, structures, improvements, and fixtures thereon, located within the City of Boston, Commonwealth of Massachusetts, containing 1,032,483 square feet or more or less, as shown on a plan entitled "Plan of Land of the Boston Terminal Corporation, Boston, Mass., Scale 1" = 40 December 1965, Revised December 23, 1965" recorded among the land records of said City of Boston and bounded and described as follows:

Beginning at the intersection of the west side of Dorchester Avenue and the south side of Summer Street and running northwesterly on a bearing of N 54° 41' 57" W for a distance of 680.26 feet to a point of curvature;

Thence curving in an arc in a southwesterly direction with a radius of 34.61 feet, centered in a southerly direction, running for a length of arc of 63.42 feet;

Thence continuing southwesterly along the easterly side of Atlantic Avenue on a bearing of S 20° 18' 28" W for a distance of 1165.87 feet;

Thence running slightly north of west on a bearing of N 73° 36' 32" W for a distance of 95.56 feet;

Thence running southerly on a bearing of S 16° 37' 26" W for a distance of 41.03 feet;

Thence running southsouthwest on a bearing of S 28° 38' 55" W for a distance of 120 feet;

Thence running southerly on a bearing of S 16° 37' 26" W for a distance of 774.86 feet;

Thence commencing a series of six (6) short legs to the southsouthwest by veering slightly to the southsouthwest and running southwesterly on a bearing of S 20° 43' 35" W for a distance of 89.91 feet;



Thence running southwesterly on a bearing of S 38° 26' 35" W for a distance of 161.80 feet;

Thence running west-southwesterly on a bearing of S 53° 33' 53" W for a distance of 163.94 feet;

Thence running west-southwesterly on a bearing of S 74° 19' 53" W for a distance of 156 feet;

Thence running westerly on a bearing of S 86° 30' 29" W for a distance of 91.80 feet;

Thence running westsouthwesterly on a bearing of S 53° 33' 53" W for a distance of 72 feet;

Thence turning through south and running east-south-east on a bearing of S 73° 25' 58" E for a distance of 354.63 feet;

Thence turning through east and running northeast on a bearing of N 53° 31' 56" E for a distance of 79.61 feet;

Thence running northeast along the Fort Point Channel on a bearing of N 63° 22' 56" E for a distance of 570.86 feet;

Thence running north-northeast on a bearing of N 08° 23' 58" E for a distance of 28.78 feet to a point of curvature;

Thence curving in an arc in a northeasterly direction with a radius of 162.00 feet, centered to the southeast, running for a length of arc of 89.70 feet;

Thence running in a west-northwesterly direction on a bearing of N 63° 37' 28" W for a distance of 102.46 feet;

Thence turning through north and running in a northeasterly direction on a bearing of N 26° 22' 32" E for a distance of 745.71 feet;

Thence running in a northeasterly direction on a bearing of N 39° 09' 55" E for a distance of 7.22 feet;

Thence running in a northeasterly direction on a bearing of N 26° 22' 32" E for a distance of 967.24 feet;

Thence running in an east-southeasterly direction on a bearing of S  $63^{\circ} 37' 28''$  E for a distance of 261.12 feet;

Thence running in a northeasterly direction on a bearing of N  $26^{\circ} 22' 32''$  E for a distance of 216.98 feet to intersect the starting point of this description.



EXHIBIT C

AIR RIGHTS DESCRIPTION --BOSTON

SOUTH STATION

(To be developed by MBTA AND BRA)

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: Robert F. Walsh, Director

SUBJECT: South Station Urban Renewal Area Project No. Mass. R-82  
Authorization to execute a Cooperation Agreement with  
Federal Rail Administration concerning repairs to the Headhouse

The first step in at least an \$18 million commitment by the FRA and an \$11 million commitment by the State to redevelop South Station is the proposed agreement between the MBTA, the FRA and the BRA which permits the FRA to contract directly for repair work to be performed at their cost and under their direction in the South Station headhouse.

This agreement reflects consent by the BRA, FRA and MBTA on a list of critical repairs needed at the South Station. This list includes the permanent upgrading of the headhouse roof, the interim repair of the passenger concourse roof, the replacement of the existing rear windows with double hung windows and the undertaking of various clean up tasks in the basement. These repairs will protect the building until a more comprehensive rehabilitation program can be prepared and funded. The Federal Rail Administration has now agreed to allocate \$250,000 towards this list of improvements.

The following three party contract will include all the above items. The replacement of the headhouse roof will form the base bid and the other items will be additive alternatives. The preparation and letting of the contract will solely be the responsibility of the FRA. The BRA has reviewed the contract plans and found them acceptable. It will review and comment on any modifications to the plans prior to advertising and has a right to comment on any changes which will be made on the scope of work and to participate in the final inspection of the work.

In order to carry out the above program, the BRA, as owner of the premises, grants to FRA a temporary construction easement and, to the extent of our continuing ownership, a covenant that the station will remain available for inter-city rail until January 1, 1984.

Since the improvements will enhance the existing structure at no cost to the Authority, I recommend the following vote be adopted:

VOTED: That the Director be authorized to enter into a contract essentially in the form of the attached document with the Federal Rail Administration and the MBTA for the purposes of permitting the Federal Rail Administration to fund and contract out certain repairs to the Headhouse.



